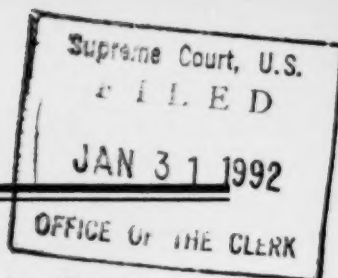


③
No. 91-650



IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

THE MARYLAND CLASSIFIED EMPLOYEES
ASSOCIATION, INC., *et al.*,

Petitioners,

v.

WILLIAM DONALD SCHAEFER, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeals Of Maryland

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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**COUNTERSTATEMENT OF
QUESTION PRESENTED FOR REVIEW**

Did the Court of Appeals of Maryland hold correctly that no contract right was violated by an Executive Order promulgated by the Governor of Maryland which increased the work week for certain state employees from 35 $\frac{1}{2}$ hours per week to 40 hours without any corresponding increase in pay?

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COUNTERSTATEMENT OF THE CASE

Petitioners filed this suit in the
Circuit Court for Anne Arundel County,
Maryland, challenging an Executive Order
issued by the Governor of Maryland which
increased the number of hours of certain

state employees from 35¹/₂ hours to 40 hours a week, without any additional compensation. (App. at 37a.) In their complaint, Petitioners asserted that the Executive Order violated numerous constitutional and statutory rights, including their rights under the Contract Clause of Article I, § 10 of the United States Constitution. (App. at 54a.) In their subsequent motion for summary judgment, however, Petitioners set forth no reasons or argument in support of their Contract Clause claim. Following the filing of the State's cross-motion for summary judgment, and after holding a hearing on the motions, the circuit court entered judgment in favor of the State. (App. at 4a-22a.)

Petitioners appealed the circuit court's decision and simultaneously petitioned the Court of Appeals of Maryland, the highest court in the State, for a writ of certiorari prior to judgment in the intermediate

appellate court. (Supp. App. at 12a.) The Court of Appeals granted review, unanimously upheld the validity of the Executive Order by a per curiam order dated July 17, 1991, and stated its reasons would be provided in an opinion to be filed. (App. at 2a.) After the filing of the petition to this Court, the Court of Appeals issued its opinion on December 12, 1991. (Supp. App. at 1a.)

REASONS FOR DENYING THE WRIT

A. Petitioners Assert A Claim Not Raised In Or Decided By The Courts Below.

The central thrust of the petition rests on the assertion that Petitioners have a contract right which was impaired in violation of Article I, § 10 of the United States Constitution. That claim, however, was neither raised in nor decided by any of the courts below. Although reference to the Contract Clause was made in the complaint for declaratory judgment that Petitioners filed

in the Circuit Court for Anne Arundel County (App. at 54a) as well as in the petition for a writ of certiorari they filed in the Maryland Court of Appeals (id. at 63a-64a), Petitioners never briefed the issue raised here.¹ Accordingly, neither of the courts below addressed the Contract Clause claim that Petitioners ask this Court to review. For these reasons, this Court should decline to consider that claim. See DeShaney v. Winnebago County Department of Social Services, 109 S.Ct. 998, 1003 n. 2 (1989); Youngberg v. Romeo, 457 U.S. 307, 316 n. 19 (1982); Dothart v. Rawlinson, 433 U.S. 321, 323 n. 1 (1977); Adickes v. S. H. Kress & Co., 398 U.S. 144, 147 n. 2 (1970).

¹ In its cross-motion for summary judgment, the State argued that under state law Petitioners abandoned their Contract Clause claim and other rights that were raised in the complaint but not addressed in Petitioners' summary judgment motion. Petitioners never sought to cure this omission.

**B. The Petition Does Not Present A
Substantial Federal Question.**

Review is also unwarranted because the issue of whether Petitioners have a contract right to work 35¹/₂ hours each week is a question of state law only that this Court has no jurisdiction to review. Both courts below properly considered applicable state rules and regulations in concluding that no such contract right exists. (App. at 13a-16a; Supp. App. at 32a-34a.) There is no reason for this Court to exercise its discretionary jurisdiction to review the matter further.

CONCLUSION

For the reasons stated, the petition should be denied.

Respectfully submitted,

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